

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.79 OF 2006

Balasaheb Bapu Gaikwad & Anr. .. Appellants
Versus
Kashinath Khandu Gaikwad & Ors. .. Respondents

Mr.V.G.Mujumdar for appellants
Ms.Sarkhot i/b. R.V.Govilkar for respondent Nos.
1, 2A to 2D, 4 and 5.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 16th August 2007.

P.C.

. Heard Mr.Mujumdar for appellant and
Mr.Sarkhot for respondent Nos.1, 2(a) to 2(d), 4
and 5. Appellants are the original plaintiffs
who have filed a suit being Regular Civil Suit
No.44 of 1986 for partition and separate
possession of their 2/3rd share in the suit
property, which is more particularly described in
paras 1A and 1B and for declaration that the sale

deed executed by original defendant No.3 in favour of the original defendant Nos. 1 and 2 is vitiated by fraud and, therefore, deserves to be cancelled as not binding upon them.

2. The suit was dismissed on the count that the appellants failed to prove that the suit property being S.No.87/3 is their ancestral property and they have share in it.

3. The whole case set up in the plaint is that the sale deeds which are of the year 1964 and 67 are illegal, null, void and not binding because the father of the appellant had executed the sale deed under the influence of liquor. The property is ancestral property and it is clear that they could not have been alienated by the father in the manner done. For these reasons, the sale deeds were sought to be challenged.

4. The courts below framed necessary issues

in the light of the pleadings and the suit was dismissed.

5. However, during the pendency of Regular Civil Appeal, one application for amendment was preferred and two more defendants were added to the suit. That amendment was allowed and, therefore, a remand was necessitated for giving liberty to both sides to lead evidence and give findings on the Addituional issues arising out of pleadings. The suit upon remand for the purpose of additional issue has also been dismissed. The Courts below have held that apart from the suit claim being barred by limitation, appellants additionally have failed to prove that any fraud was played by defendant Nos. 1 and 2 on defendant No.3 when he was under the influence of liquor.

6. Assuming that there is some substance with regard to the pleas raised on the issue of

limitation, yet, it is clear that the lower appellate court has, after scrutiny of the entire documentary and oral evidence, held that the appellants have failed to prove that the sale deeds are vitiated by fraud. In para 25 of the lower appellate court's judgement it has been clearly observed that except bare word of appellants, there is nothing on record to show that original defendant No.3 was addicted to drinking and sale deeds were got executed by defendant Nos. 1 and 2 when he was under the influence of liquor. Defendant No.3 was very much alive at that time and did not enter the witness box to depose on oath. P.W.2, grand father of the appellant - plaintiff would have some knowledge about the addiction, drinking habit of defendant No.3 but when he was examined he failed to state anything on this aspect. Defendant Nos. 2 and 3 are the attesting witnesses who have proved the sale deeds executed in favour of defendant No.1 and stated that they

were present. No suggestion in the cross examination or anything substantial has been extracted with regard to the alleged addiction and the habit. Therefore, this is not a case where only on the issue of limitation that the appellants have been non-suited. They have also been non-suited on the issues which have been thoroughly discussed and properly and completely appreciated by the lower appellate court. This is not a court of further appeal so as to undertake another exercise of re-appreciating and re-appraising the evidence. More so, when the sale deeds are dated 21st July 1964, 19th May 1967 and 14th November 1967. Thus, when the findings on all points which have been framed by the lower appellate court are against the present appellant and the suit has rightly been dismissed, this is not a court where another exercise can be undertaken. No substantial question of law arises in the peculiar facts of this case. Second Appeal accordingly is

dismissed.

(S.C.DHARMADHIKARI, J)